

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 4

Relating to: Procedures for Dismissal of Faculty

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including faculty. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 4, regarding Procedures for Dismissal of Faculty, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 4 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 4 provides a disciplinary process for pursuing dismissal of faculty for just cause. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter on several occasions.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 4 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 4 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 36.09(1)(a): “The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

40 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the faculty thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including faculty. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of faculty sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual

misconduct and effectively implements remedies for victims. Chapter UWS 4 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

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Department Head or Authorized Signature

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Date Submitted